

**FILED**  
**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**  
BUREAU OF PRISON, NEW MEXICO

FEB 26 2003

KENNETH FOLLIS,

Plaintiff,

v.

DONA ANA COUNTY,

Defendant.

No. CIV-02-1639 MV/DJS

MEMORANDUM OPINION AND ORDER


This matter is before the Court *sua sponte* to review Plaintiff's civil rights complaint under 28 U.S.C. § 1915(A) and Fed.R.Civ.P. 12(b)(6). Plaintiff is incarcerated and appears pro se. For the reasons below, Plaintiff's complaint will be dismissed.

The Court has the discretion to dismiss a complaint "if the complaint . . . is frivolous, malicious, or fails to state a claim upon which relief may be granted." § 1915(A). The Court also may dismiss a complaint *sua sponte* under Fed.R.Civ.P. 12(b)(6) for failure to state a claim if "it is 'patently obvious' that the plaintiff could not prevail on the facts alleged, and allowing him an opportunity to amend his complaint would be futile." *Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991) (quoting *McKinney v. Oklahoma Dep't of Human Services*, 925 F.2d 363, 365 (10th Cir. 1991)). In reviewing Plaintiff's pro se complaint, the Court applies the same legal standards applicable to pleadings drafted by counsel but liberally construes the allegations. *Northington v. Jackson*, 973 F.2d 1518, 1520-21 (10th Cir. 1992).

The complaint claims that Plaintiff has been falsely imprisoned. A false imprisonment claim must "specifically alleg[e] facts that show a government official acted with deliberate or reckless

intent to falsely imprison the plaintiff.” *Romero v. Fay*, 45 F.3d 1472, 1480 (10th Cir. 1995). Here, Plaintiff was arrested for assault with a deadly weapon. The only allegation in support of the asserted “falsity” of Plaintiff’s incarceration is that he has a valid defense to the criminal charges against him. “In light of the [Supreme] Court’s recognition that the judicial system represents the proper forum in which to determine the innocence of an arrestee, Defendants’ refusal to release Plaintiff when he maintained his innocence does not exhibit deliberate or reckless intent to falsely imprison him.” *Id.* at 1481. No relief is available on Plaintiff’s claim of false imprisonment, and the complaint will be dismissed.

IT IS THEREFORE ORDERED that Plaintiff’s complaint is DISMISSED with prejudice, and this action is DISMISSED.

  
UNITED STATES DISTRICT JUDGE